

MCGUIREWOODS LLP

Adam F. Summerfield (SBN #259842)

1800 Century Park East

8th Floor

Los Angeles, CA 90067-1501

Telephone: 310.315.8200

Facsimile: 310.315.8210

Attorneys for Defendant Bank of America, N.A.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

MARSHALL S. SANDERS and
LYDIA O. SANDERS AS TRUSTEE
OF THE MARSHALL AND LYDIA
SANDERS TRUST DATED APRIL
20, 1990,

Plaintiffs,

vs.

BANK OF AMERICA, N.A.; WELLS
FARGO BANK, N.A., AS TRUSTEE,
ON BEHALF OF THE HOLDERS OF
THE HARBORVIEW MORTGAGE
LOAN TRUST MORTGAGE LOAN
PASS-THROUGH CERTIFICATES,
SERIES 2007-1; NATIONAL
DEFAULT SERVICING
CORPORATION; SELECT
PORTFOLIO SERVICING, INC.; and
DOES 1-20,

Defendants.

CASE NO. 8:15-cv-00935-AG-AS

**NOTICE OF NON-RECEIPT OF
OPPOSITION TO MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Complaint Filed: June 11, 2015

Orig. Set for Hearing on Oct. 26, 2015
Continued by Court Order to:

DATE: Nov. 9, 2015
TIME: 10:00 a.m.
DEPT.: 10D

Hon. Andrew Guilford, United States
District Judge Presiding

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD, AND THE
HONORABLE COURT:**

PLEASE TAKE NOTICE that on September 24, 2015, Defendant Bank of
America, N.A. ("BANA") filed with this Court its Motion to Dismiss Plaintiffs'
First Amended Complaint. Dkt. No. 39 (the "Motion"). The Motion was properly

1 noticed for hearing on October 26, 2015. Pursuant to Local Rule 7-9, Plaintiffs'
2 Opposition was due twenty-one days before the hearing, or October 5, 2015. On
3 September 30, 2015, Plaintiffs filed with the Court a "Request/Application for
4 continued hearing on motion to dismiss" (Dkt. No. 43), which the Court granted on
5 October 7, 2015, continuing the hearing on the Motion to November 9, 2015, at
6 10:00 a.m. Dkt. No. 44.

7 As calculated by the reset hearing date, Plaintiffs' Opposition, or notice of
8 non-opposition, was required to be filed no later than October 19, 2015. *See* C.D.
9 Cal. L-R 7-9. To date, BANA has not been served with any opposition to the
10 Motion, and the Court's online docket does not reflect that Plaintiffs have filed
11 either an opposition or notice of non-opposition with the Court.

12 Pursuant to Local Rule 7-12, "[t]he failure to file any required document, or
13 the failure to file it within the deadline, may be deemed consent to the granting... of
14 the motion." *See* C.D. Cal. L-R 7-12. Moreover, a failure to challenge a party's
15 argument in an opposition (or reply) operates as an admission that the argument is
16 meritorious. *See Tait v. Asset Acceptance, LLC*, 2013 U.S. Dist. LEXIS 105095, at
17 *10-11 (C.D. Cal. 2013); *Linder v. Golden Gate Bridge*, 2015 U.S. Dist. LEXIS
18 101275, at *9 (N.D. Cal. Aug. 3, 2015); *Wahoo Int'l, Inc. v. Phix Doctor, Inc.*, 2015
19 U.S. Dist. LEXIS 81492, at *22 (S.D. Cal. June 23, 2015).

20 As Plaintiffs have failed to file any opposition or notice of non-opposition to
21 BANA's Motion, the Court should deem their failure as consent to the granting of
22 BANA's Motion. Accordingly, Defendant Bank of America, N.A. respectfully
23 requests that the Court grant its motion to dismiss Plaintiffs' First Amended
24 Complaint in its entirety and without leave to amend.

25 ///

26 ///

27 ///

28

1 DATED: October 28, 2015

Respectfully submitted,

2 MCGUIREWOODS LLP

3
4
5 By: /s/ Adam F. Summerfield

6 Adam F. Summerfield

7 Attorneys for Defendant

8 Bank of America, N.A.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2015, I electronically filed the foregoing document entitled **NOTICE OF NON-RECEIPT OF OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court, Central District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court's electronic filing system.

I served a copy of the above to:

Lydia O. Sanders
Marshall S. Sanders
1621 Kensing Lane
Santa Ana, CA 92705

By: /s/ Adam F. Summerfield